INDEPENDENT INSURANCE AGENTS OF CONNECTICUT, INC.

30 Jordan Lane, Wethersfield, CT 06109
(860) 563-1950 (800) 842-2208
FAX (860) 257-9981

Warren C. Ruppar
President

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Testimony of the Independent Insurance Agents of Connecticut to the Insurance And Real Estate Committee on Raised Bill 975, An Act Authorizing The Insurance Commissioner to Enter Into The Non-admitted Insurance Multi-State Agreement and House Bill 6363, An Act Adopting The National Conference of Insurance Legislators' Surplus Lines Insurance Multi-State Compliance Compact

Senator Crisco, Representative Megna and members of the Insurance and Real Estate committee, my name is Warren Ruppar and I am President of the Independent Insurance Agents of Connecticut. The Independent Insurance Agents of Connecticut is a trade association which has been located in Connecticut and has represented independent agents for 112 years. IIAC currently represents more than 400 member agencies and their associates as well as their 3500-plus employees. I come to you today to speak on Raised Bill 975 and House Bill 6363.

While the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act was largely a response to a financial crisis of recent years and focused primarily on the banking and securities sectors, several of the Act's provisions addressed the insurance industry. Perhaps most notably, the Act included a series of reform provisions that will have significant and hopefully beneficial effects in the non-admitted insurance marketplace. These provisions were under consideration by Congress for several years and apply both to surplus lines transactions and to those where coverage is procured directly by an insured from a non-admitted insurer. These reforms necessitate statutory and regulatory revisions in Connecticut and many other states, and IIAC looks forward to working with the General Assembly and the Insurance Department on the implementation of the required changes.

The most notable surplus line provisions of the Dodd-Frank Act and our initial comments on these items are described below:

Exclusive Home State Regulation

The Dodd-Frank Act attempts to eliminate unnecessary duplication and redundancy for multi-state non-admitted insurance transactions by embracing a single state regulatory approach. This approach establishes the principle of home state regulatory deference and requires other jurisdictions to respect the requirements and conclusions of the insured's home state.[1] Section

[1] For purposes of the non-admitted insurance reforms, Section 527(6) defines "home state" as "the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence." In cases where 100

522 achieves this result by mandating that "the placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state" and that "no state other than an insured's home state may require a surplus lines broker to be licensed to sell, solicit, or negotiate non-admitted insurance with respect to such insured."

The Act includes a clear preemption provision as well. Specifically, Section 522(c) provides, in most instances, that "any law, regulation, provision, or other action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application." Preemption does not apply, however, to state restrictions on the placement of workers' compensation insurance with non-admitted insurers.

In order to come into compliance with these new federal standards, IIAC urges the legislature to make revisions in a manner that ensures that our surplus lines requirements only apply to transactions in which Connecticut is the insured's home state.

Diligent Search Requirements

Section 525 of the Dodd-Frank Act provides that surplus lines brokers will no longer be required to satisfy state diligent search requirements for transactions involving an "exempt commercial purchaser" if (1) the broker discloses to the buyer that the desired insurance coverage "may or may not be available from the admitted market that may provide greater protection with more regulatory oversight" and (2) the purchaser subsequently requests in writing that the broker access the non-admitted market.

The Act limits the application of this reform to transactions involving an "exempt commercial purchaser," a term defined in detail in Section 527(5). In order to qualify as an "exempt commercial purchaser," an individual or entity must (1) employ or retain a "qualified risk manager"[2] to negotiate insurance coverage, (2) have had aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 over the preceding twelve months, and (3) satisfy one of the following five criteria (which, where appropriate, will be adjusted for inflation every five years):

- Possess a net worth over $20 million;
- Generate annual revenues over $50 million;
- Employ over 500 full-time employees or be an affiliate of a group employing over 1000 employees;
- If a nonprofit organization or public entity, have a budget of over $30 million; or
- If a municipality, have a population of over 50,000 people.

IIAC urges the legislature to make revisions to address these new federal requirements and to include the necessary definitions among these revisions.

Eligibility Requirements for Non-admitted Insurers

The Act's reliance on single state regulation is likely to simplify multi-state non-admitted transactions, but it goes a step further in the area of insurer eligibility requirements and ensures that these requirements will be increasingly consistent across the country. Section 524(a) standardizes the eligibility requirements for non-admitted insurers domiciled in the United

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percent of the insured risk is located elsewhere, the definition provides that the home state shall be deemed to be the jurisdiction to which the greatest percentage of taxable premium for the insurance contract is allocated.

[2] Section 527(13) provides a lengthy definition of "qualified risk manager."

States and prohibits states from imposing eligibility criteria that do not conform with the NAIC's Non-admitted Insurance Model Act, and Section 524(b) prohibits a state from restricting the placement of business with an alien non-admitted insurer that is listed on the NAIC's Quarterly Listing of Alien Insurers. Again, IIAC urges the legislature to make the necessary revisions in this area as well.

Surplus Lines Premium Taxes

The collection and distribution of premium taxes in non-admitted insurance transactions has long been a complex and challenging task, and inconsistent state laws force surplus lines brokers today into the often impossible position of trying to determine exactly how to allocate the taxes. Section 521 addresses this problem by again embracing single state regulation and permitting only the home state of the insured to require the payment of premium taxes in connection with a surplus lines transaction or direct non-admitted placement. The new statute leaves no ambiguity about the intended goal and provides that "no state other than the home state of an insured may require any premium tax payment for non-admitted insurance."

While the federal statute allows an insured's home state to require the submission of annual tax allocation reports that detail the portion of non-admitted policy premium attributable to properties, risks, or exposures located in each state, the challenging task of determining how premium tax payments are to be divided among jurisdictions is left to the states. The Act does include a statement indicating Congress's desire for all states to adopt a uniform set of standards that would ultimately create a nationwide system for the reporting, payment, collection, and allocation of premium taxes for non-admitted insurance. The new law further encourages the creation of such a system by authorizing the states to create an interstate compact or to establish other procedures for allocating the taxes paid to an insured's home state.

There are competing views about how best to address these tax collection, allocation, and distribution issues. IIAC sees merit in the comprehensive compact proposal – the Surplus Lines Insurance Multi-State Compliance Compact, or SLIMPACT – that has been strongly endorsed by the National Conference of State Legislatures, the National Conference of Insurance Legislators, and the Council of State Governments and is in Raised Bill 6363. The SLIMPACT proposal (which could be adopted in conjunction with the non-tax items outlined above) only becomes effective if ten states or jurisdictions representing over 40 percent of the national surplus lines premium volume enact the necessary legislation, and we believe this is a concept worthy of review. We are aware that the National Association of Insurance Commissioners hopes to develop an alternative clearinghouse mechanism, which is in Raised Bill 975, to address these issues and is encouraging states to provide broad authority for state regulators to participate in any such structure, but the precise nature and scope of that proposal still remain unclear and initial indications suggest that the system may be more onerous for the industry than if the states did not act at all.

We urge the committee to continue to review these proposals and meet the goals of the federal legislation by embracing a single state regulation approach.